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ABSTRACT

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PUBLIC VERSUS NONPUBLIC EDUCATION IN HISTORICAL PERSPECTIVE

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Abstract

This paper examines some of the social history underlying the relationship between the public and private sectors of elementary and secondary education in the United States. Of particular concern are traditional motivations and rationales for resisting public authority in education. The analysis also touches upon the evolution of special enclaves of privilege in which the equalizing goals of the public sector do not apply. Then it is asked why public authority, once it had become the dominant pattern in schooling, was not able to eradicate the private sector altogether from this nation's educational system. The paper suggests a historical perspective for looking at fundamental issues of authority, equity, and democratic purpose in education, whether public or private.

Public support of nonpublic schools is neither a new phenomenon nor only a recent controversy. For this reason it is useful, when considering a proposal like tuition tax credits, to keep open a window on the past, to be mindful of the dilemmas posed by history. It is especially useful to examine the social tensions that produced competing assumptions about the relationship between the public and private sectors in education. Origins are useful for understanding outcomes, and precursors can offer valuable insight into their progeny of subsequent social relations. This kind of understanding can serve as an antidote to facile formulas and ideological appeals, and thus it provides an important complement to other forms of policy analysis.

To achieve historical perspective on the issue of tuition tax credits, one way to begin the inquiry would be to look at moments of crisis in nonpublic education. Within this frame of analysis it would be plausible to reach far into the past for clues about the current crisis and proposed remedies. For example, clearly there was a crisis when the common schools first began their spectacular expansion under public authority in the 1830s. Immigrant groups in general and Catholics in particular were threatened as they tried to accommodate to the expanded public sphere in schooling, since it carried the cultural and religious stamp of the Protestant majority. There was profound disagreement, then as now, over how the schools should be governed and financed. Along with the common school crusaders like Horace Mann, who were advocating a consolidation and centralization of educational authority under public auspices, there were also people like Bishop John Hughes of New York,

who were arguing for pluralism and self-determination in the establishment of schools.

While much has changed since then in American education, much has remained the same in the perennial debate over who should control the schools. To continue the example just cited, we can find other elements in the past that have a direct bearing upon the current policy debate and suggest the need for further analysis. William Henry Seward, governor of New York in the late 1830s and early 1840s, later one of the leaders of the Republican Party and Secretary of State under Abraham Lincoln, argued that public money should go to Catholic immigrants without nativist restrictions so that they could organize their own schools as they saw fit. The "great school wars" that ensued were vituperative and occasionally violent, both in New York City and then in the Philadelphia riots over which version of the Bible was to be used in public schools. In both instances--perhaps everywhere in the young nation as the years passed--the cultural identity of the public schools became increasingly linked to some people's interests more than to those of others. It became associated with the cultural consensus of some groups more than with that of others. Thus limited and legalized, public schooling became one of the driving forces of national unity. One result in the long run, as we look at the sweep of history from the 1840s to the present day, was that Catholics built a separate school system, without public support, to affirm privately the values and authority which the public sphere denied. In today's debate over tax credits for parents whose children attend nonpublic schools, it is interesting to think about

what educational traditions we might be drawing upon had Seward's advice been heeded.

The questions surrounding "public" versus "private" cannot help but be enlivened by such a perspective. This essay will discuss several related issues, reflecting upon history to generate implications that sometimes escape notice when policy analysis is locked in present time. The purpose is to stimulate policymakers to take stock of underlying tensions that have shaped our notions of what is public and private in education. This purpose, it should be pointed out, is not the same as reviewing the history of private education or of proposals such as tuition tax credits. These reviews would also be useful endeavors, particularly the latter, since tuition tax credits and similar proposals have surfaced repeatedly and with increasing frequency at the federal and state levels since World War II. The present essay will only go so far as examining some key aspects of the social context of public support for nonpublic education. Three central questions frame the discussion that follows:

(1) Why have some people resisted public authority and established schools that claim another basis of legitimacy as much as possible outside of the formal state authority upon which public schools are constituted?

(2) Did the separation of some schooling into nonpublic spheres of association have the effect of creating special enclaves of purpose and privilege as well as providing cultural pluralism; and if so, did nonpublic schooling undermine the efficacy of public education by removing certain groups from its equalizing intent?

(3) Once public schooling had become the dominant pattern, why did it not eradicate nonpublic schooling altogether, and what does this failure tell us about the persisting roles of both public and nonpublic schooling in the United States?

As these questions suggest, the existence of two separate and exclusive sectors of educational authority is no mere formality. History shows it to be a powerful structure for shaping social purpose and for distributing social benefits. As Ralph Dahrendorf has pointed out, the reality of an expanding society is determined not only by the common interests of those with a stake in expansion, but by their methods of contracting agreements.[1] One such agreement obviously is the distinction between public and private. Public authority receives legitimacy by virtue of citizenship in a state to which the public has given its consent, while private power is justified as belonging by right to the individual citizen and to nonpublic forms of association in the society. Interestingly enough, especially in light of today's policy debate, the distinction is a relatively recent one in the history of human institutions. It is a social agreement that became increasingly distinct as state and society both expanded in nineteenth century America, manifested on one side by the growth of various social services like education and prisons, on the other by an enlarged scale and a more independent legal status for private corporations. For the institution of formal schooling, the distinction between public and private arrived laden with ideological conflict. The cleaving of public from private and from mixed public-private authorities exposed competing aspirations of different groups

in society, and it intensified both the opposition and the mutuality of their interests. People in those days, just as much as people today, had an inkling that the agreements by which their children were brought together in school would anticipate the agreements that were to prevail among adults in the social order.[2]

The story of how the change came about in education is part of a much larger story. In the quarter century preceding the Civil War, during the first surge of industrialization in this country, when transportation and communications likewise began to take off, and the increasing access to markets sparked the century-long transformation that modernized and urbanized what had previously been an agrarian nation, and also when the economy began to absorb tremendous numbers of immigrants into the wage labor force, education expanded along with all the rest. But the structure of education changed by agreement. It became mostly "public" as we use the form today, a use that had not existed in so distinct a sense before the movement to establish common schools.[3] The change was bound up in a drive for a millennial consensus on national identity and purpose. Related trends could be found in the disestablishment of religion, in territorial expansion and social mobility, in the isolation of individual economic roles from traditional networks of family and church and community, and in the attenuation of older agreements, reminiscent of mercantilism, between government and private associations acting in the public interest.

A new reality indeed--yet it is important to recall today that the shift from private to public in formal schooling was not an abstraction

like justice or beauty. It was tied inextricably to particular groups who advocated the change, especially to a rising middle class with a vision of the future and a stake in enforcing the distinction. Public authority over schooling was hard-won; it was more fragile, perhaps less logical and irreversible, than historians of public education have traditionally led us to believe. The benefits of education, that great engine of human capital in a burgeoning economy, may seem beyond question when examining the growth of the new nation in its first century. But why public education? Private education and the numerous quasi-public forms of private association had already put the United States in the first rank of nations by the time the reformers began their crusade in the 1830s. What were the interests of these visionaries who were coming to the fore and volunteering to man the new system? Perhaps the same result could have been achieved without a preference for state authority over private association. Or perhaps it might have been possible to expand the tradition of informal agreements between public and private, to continue to blur the distinction, let the two realms interpenetrate as had been the case before, and as is being proposed again today in the form of tuition tax credits.

Competing Bases of Legitimacy

Why is it that some people resisted public authority and established schools that claim another basis of legitimacy as much as possible outside of the formal state authority upon which public schools are constituted? It is not any exaggeration to say that the past 150 years have seen a progressive extension of public authority into almost every sphere of private nurture. Those spheres have survived in formal schooling only

when groups of people had the wherewithal to maintain their chosen institutional forms against the public system. In many instances the legitimacy of these forms was rooted in religious authority--but often it was not, such as in the development of elite academies. Although it is true that because of the constitutional separation of church and state, restrictions have been placed both on the religious content of public schooling and on the use of tax revenues for private schooling, this is only a partial explanation. For many years, even after the appearance of public schools, there were myriad instances when the two sectors cooperated, even intermingled under state auspices; yet as the century passed these arrangements dwindled. To discover causes one must excavate more than legal precedent and unearth more than the merely institutional history of schooling.

Whether religious or not, all private schools shared a need to set themselves apart from the expanding agencies of public authority--and from the numerous voluntary organizations that assisted in the building of public institutions. They did not necessarily reject outright the benevolent ideologies promising democracy, public welfare, and national unity. But they had in mind a different set of agreements for achieving such ends. Once the dominant mode of organizing social services, "private" came to define itself as that which was not public. It was nonpublic, claiming the privilege of pluralism as it took exception to the pervasive institutional forms created by public authority. The dilemma that emerged was an enduring one. Pluralism and free choice were thought by many people to be the essence of democracy, but in the new world that had

come into being these values were at loggerheads with the democratizing force of public authority as it dotted the land with common schools.

Separate traditions of historical scholarship have made it difficult to produce a satisfactory explanation of these developments. Most educational historians in the past have written about education from the perspective of the institution itself, and when they have suggested any relationship between the public and private sectors, it has been conditioned by a belief in the goodness--or in recent times, the culpability--of their chosen institution. The result has been a fragmented understanding of the whole, an assumption that the reality of formal education was grounded in only one of its parts.

Catholic historiography is a good illustration of the problem. For decades it was a celebration of the Church valiantly maintaining religious education in the United States. Recently there have also been interpretations of the tumultuous social history within Catholic communities. The picture that is emerging now shows how the development of parochial schools stemmed both from internal conflict and from a need to respond to external forces such as the Protestant drive to establish universal public schooling. One historian has argued that "the growth of separate Catholic schools was thus not so much a natural and preordained extension of the Church's mission in America, but a response to the rapid development of a Protestant-based public school system, often guided by people who felt themselves alienated from America's dominant culture." The experience of Catholic education shows "public" and "private" to have had a mutual life, albeit largely antagonistic.[4] In that life many of our assumptions about their separateness took form.

On the public side there is evidence that the fears of Catholics and other cultural minorities were by no means illusory. One conclusion standing out in the work of recent historians is that in the "benevolent empire" of associations for moral improvement and education, individual advancement was tied to a millenial vision that promised a new order of the ages on earth--an order which happened to coincide with the social order advocated by the Protestant leaders in charge of the fastest growing sectors of the nation's economy. The result was a "Protestant-republican ideology" which the social reforms--including the crusade to establish common schools--did so much to spread and reinforce.[5]

It is a revealing commentary but only a partial explanation to say that the reformers were part of a larger pattern of dominance and imposition. In the surge of nation-building and economic development, the majority beheld opportunity, aspiration, and manifest progress if only the people entering this new order could develop the human capital--the skill and virtue--necessary to keep up with the pace of change. Horace Mann fully recognized this, being one of the first publicists of the human capital hypothesis. He and other school crusaders saw that a niche had been made for a public institution to mediate between the unlearned masses and the accellerating demands of the occupational structure. It could be argued, as Mann's biographer has done, that Mann saw more than this, that his vision comprehended, as that of the private sector did not, the <u>unlimited</u> power of a system of education under public auspices in a democratic polity; and he saw that at its best, this power could be used as a countervailing force against inequality.[6] Whether to think of the father of the common school as a

prophetic reformer or a bureaucratic statist is a question for each generation to reconsider in light of its own experience, but in his time he was proposing a concept of universality that went a step beyond what had been proposed by Thomas Jefferson and other Founding Fathers of the new nation. In creating public education, Mann and other reformers believed they were at last completing the American Revolution with an institution that would become, in the Mann's oft-cited words, "the great equalizer of the conditions of men--a balance wheel of the social machinery." But this vision of progress also fully embodied the dilemma of the emerging order, since the line between consensus and hegemony was not clear. Mann himself revealed the danger when he wrote ecstatically in his journal about this newly discovered power of universal enlightenment in the hands of a few people acting under state authority to create a democratic nation of well-behaved literates: "What a thought, to have the future minds of such multitudes dependent in any perceptible degree upon one's own exertions! It is such a thought as must mightily energize or totally overpower any mind that can adequately comprehend it."[7]

The age in which the common school movement began also invested some other social meanings in the notion of "public" authority. Throughout the nineteenth century, as more than one historian has emphasized in recent scholarship, schoolmen saw their quest as a holy crusade to establish a redeemer nation--a vision that goes back as far as the Mayflower. They found themselves suited for the job: evangelical Protestants, Anglo-Saxon, bourgeois, middle-aged, native-born, married males from rural backgrounds. They were able to make public schools

an instrument of national unity by domesticating the millennial urges of the revivals and moral reforms. Burying their differences and accepting public authority as a common medium for moral indoctrination, Protestant reformers thus were able to institutionalize their influence through the expansion of public institutions modeled on their values.[8]

What emerged from this nineteenth century social movement was neither the best of all possible worlds nor the end of ideology, for the voluntary consensus, the millennial conception and all the social agreements it implied, broke down when it came to the increasing numbers of Catholics who were immigrating to the United States. They were bringing with them a religious and communal pattern of authority that lay outside the social order upheld by the Protestant majority. When hostility ensued, the irony was that these incoming masses of immigrants were as necessary as they were menacing to the millennial expectations of the majority. If a new age were to arrive, it would depend upon the contributions of this growing labor force in an expanding economy. Public funding and control therefore came to mean the maintenance of a secularized core of Protestant values, backed by institutions managed by the rising middle class. It also came to mean a denial of legitimate "public" exercise of the communal forms, ecclesiastical authority, common interests, and native languages that the immigrants brought with them to the New World. The great years of institution building were also years of nativist agitation, urban riots, and economic insecurity for the middle class. The impetus behind public intervention in schooling was no mere difference of opinion about how formal instruction might

be improved. As the "school wars" in the cities demonstrated, the creation of a sphere of public authority for educating children took on particular social meanings, blocking the transmission of some cultures while accelerating assimilation into another.

On the public school side it was argued that these schools were not prejudiced since they freely served a variety of students, they did not teach a preferred religion but kept such instruction as secular morality outside of ecclesiastical authority, and they fostered social amalgamation. And after all, public education was one of the wonders of the nineteenth century: it was accomplished through local consensus. It assuaged the tensions of the rich and poor through expanding social services. It mitigated the breakdown of family and communal ties with expanded opportunities and social awareness. It reduced the class conflict of urban life by persuading the middle class to turn from private to public institutions and to participate side by side with the poor, once the latter were persuaded that such services were not charity.[9]

But the result threw immigrant culture and the Catholic religious hierarchy into a quandary. It became an open and sustained crisis after the 1840s when cities and then states began to follow the lead of New York in denying public funds to Catholic schools while requiring the use of the English Bible in public schools. For those whose ultimate authority to educate was bound up inextricably in religious teachings, the secularization of education and imposition of Protestant values was a denial of the basis upon which their community and ethnic ties were constituted. Their traditions required clergy for instruction in

the scriptures; the Protestant consensus did not. They had an equal stake in the agreements supporting a public conception of education, but the agreements were made so as to exclude their chief interest in educating youth. As the school crusade sped outward from New England and became the dominant pattern, public officials increasingly refused to bargain with existing Catholic schools to determine what middle ground of public interest might be agreed upon. The consensus brooked little diversity within.

Catholic officials wavered for a few years, seeing that "public" had become simply Protestant and better off. Then they began defining an educational ideal of their own, proceeding slowly to build what became the largest system of private schooling in the world. It was a system at first designed to protect the interests of immigrant communities while preserving traditional family values and religious teachings. As it evolved, the course of parochial education followed that of Catholic communities in America, eventually becoming mostly a middle class institution in this century, and then dwindling, though not greatly in proportion to its total size, as more affluent Catholics migrated to the suburbs.[10]

What we have in view, then, is an unsettling history to add to the balanced categories with which the legal tradition distinguishes between "public" and "private" in American education. The rise of mass schooling paralleled an unprecedented congruence of religious, ethnic, and class conflict. Its success entailed the use of newly created "public" authority to consolidate a Protestant consensus that favored the non-Catholic middle and upper strata of society. Like revivals and other reform movements aiming at moral regeneration of the individual, public schooling supported

an expanding economy in which most Catholics served as wage labor at the time. Catholic resistance led to separate and distinct forms of education; but the agreement allowed Catholics to educate as they pleased in the private sector, though without public support.

As it solidified in a century's accretion of legislation and precedent, the separation became almost an article of faith for the middle class majority, which continued to be anxious about the contradictory social tensions that threatened the consensus on which they had staked their rise to affluence. Now that these tensions seem buried in a distant past, the most important legacy of conflict may have been to justify a narrow interpretation of the nation's constitutional separation of church and state. Even this has been changing in recent years, though not enough to alter the distinct realities of education in the public and private sectors, nor enough to reform the singular reality in which the distinction between public and private serves as a way of distributing social benefits outside of the democratic polity. But because the right of private association was left open as an alternative to public education, it was possible for Catholic communities to preserve a form of education that defined its legitimacy as much as possible outside of the state while remaining relatively equitable. The social cost of such "community control" is difficult to imagine, given the economic standing of the participants.

This brings us to the second major question to be addressed in the present essay--the question of equity. Did the separation of some schooling into nonpublic spheres of association have the effect of creating

special enclaves of purpose and privilege as well as providing cultural pluralism; and if so, did nonpublic schooling undermine the efficacy of public education by removing certain groups from its equalizing intent?

From Pluralism to Privilege

Some additional insight can be gained from another stream of scholarship, neither public nor parochial. Historians have traced the development of the private academy from its appearance in the eighteenth century to its hard times in the latter quarter of the nineteenth century, when such institutions were nearly extinguished by the growth of the public high school, and then to the present time as they have become what are known as the independent schools. In 1879 private academies and the preparatory departments of private colleges enrolled about 73 percent of all secondary students in the nation; during the next decade, as the public high school took hold, the number fell to 32 percent; by 1920 all private enrollments in elementary and secondary education amounted to only 7 percent. From the turn of the century onward the academies became mostly elite schools serving the well-to-do, and now they constitute less than ten percent of private education. But it was not always so. In their heyday before the Civil War, private academies competed successfully with public schools. Academies served the middle class effectively in many areas and often received indirect public support, such as land grants, special funds drawing from state fees, and the proceeds of lotteries. Until the high school appeared they were viewed as "public" institutions and a training ground for local leaders in the communities they served. Their demise is thought to be intimately connected with urbanization, since they were a rural institution while

the public high school took hold in the industrializing cities that were drawing an increasing proportion of the American population at the end of the century.[11]

The values of such private institutions, like those of the Catholic schools in this respect, were rooted in a way of life that was threatened by the cultural amalgamation of public schools--a poignant theme in today's debate over tuition tax credits. Academies confronted the disruption of traditional community that was occurring in the competitive, rationalized, and stratified economy:

> the community was a school, transmitting informally its own culture to the students as surely as formal knowledge was being transmitted to them in the few hours a day they spent in classes. Such close integration of school and society presupposed a relatively stable, homogenous society. A family that sent its children to an academy assumed, in effect, that the communities and families in which its children would live could be counted on to share the same values as itself and that therefore the child would not be exposed to any contaminating influences.[12]

Parents often had to send their children away from home to participate in such an idealized community. In reality, as the last century progressed, social life was becoming more heterogeneous, families more mobile, often bound for cities sooner or later. By the end of the century, when about 40 percent of the nation's population was living in cities, the middle and upper classes were following separate paths of education, the former to public schools for the masses, the latter to elite academies: "Faced with a choice between sending their children to public schools modeled on factories or to private schools modeled on families, many well-to-do parents made the obvious decision."[13]

Could it be inferred that public and private education were complementary so as to distribute social benefits and opportunities in predictable ways to certain groups of people? Such an argument has been made about the elite academies of the twentieth century. One of the necessary functions for consolidating an elite is to create a primary social world in which the younger generation can be properly socialized. For the top stratum of society, an education that took the form of a private corporation instead of a publicly controlled institution was ideally suited for accomplishing this function. In a world that was falling increasingly under public authority, private education was a surrogate family for children of the elite, argues E. Digby Baltzwell. Such academies flourished and assumed their distinctive identity in reaction to the growth of the public high school at the end of the nineteenth century. While public schools were developing an institutionalized culture of rationalized efficiency, hierarchial order, and "Americanization" of the masses, the bucolic academies were consolidating regional elites of a passing agrarian society into the national elite at the head of a corporate and industrialized social order. They also integrated the nouveaux riches, the second generation of industrialists, into the established upper class and into its singular culture.[14]

While this arguement does not embrace the whole range of independent schools in this country, it does shed light on one mystifying aspect of the relationship between public and private education. That aspect is the maintenance of separate spheres of private association in which the equalizing and democratizing goals of the public sector do not obtain:

> The result was the creation of a highly integrated, national financial network...with many of the nation's key industries owned or operated by the families of former classmates. This process of fusion led to the creation of an enlarged and strengthened upper class exercising a major influence over much of the economy. Occupying a position at the top of both the social and financial realms, the members of this group have had little, if any, trouble in passing their own privileged position on to their children. Their success in doing so perhaps explains more about the failure of the American educational system to reduce inequality than anything that has occurred in the public schools.[15]

Thus, after an expansive pluralism that initially had favored the middle class, the academy movement later was reduced to the cultivation of privilege and left the middle class behind. What then followed was the concentration of educational excellence into an independent structure of elite schools that would reproduce as cultural capital the great concentration of financial capital among people in this group of like-minded private individuals.

In a sense, this was no aberration from the past, for education had long been seen as a way of imparting civility to each student according to social rank. Even Thomas Jefferson qualified his advocacy of universal education with a widely shared assumption that there would be differing degrees of attention to the learned and laboring classes. But the common school crusade had added a new dimension to the notion of civility by suggesting that it was not rooted in social class but in the life of the community, the public of the republic. By rejecting the agreement and excepting themselves from the reality that ensued, the wealthy changed the nature of the agreement for those who remained under public authority.

A separate civility, the transmission of favored status and educational excellence through successive generations--it appears that this was made possible by the distinction between public and private in education.

It should be recalled, of course, that numerous other kinds of private association have come and gone in American education, and many remain today. Some have been connected with the explosive evangelism of denominations in the nineteenth century. Others cropped up in utopian and communitarian experiments, while others again were formed by people like the Amish, who wanted to protect their culture against the secular mass culture of industrialized America. Some have grown out of movements to create alternative schools, reflecting a bewildering profusion of ideologies, pedagogies, and class interests. There have also been academies of the older variety, little schools established at the local level to serve a particular clientele and its interests. Taken together, all these schools constitute a tiny minority even within the private sector. But it seems undeniably true that they have been assigned a value in American culture by many people, symbolizing the possibility that any family or like-minded group might refuse public services and go their own way if they should choose.

Each type of nonpublic school yields up an intriguing history, replete with struggle against public authority and control. Inasmuch as any history might be taken to contain an argument, the point that these schools seem to have been making is not so much one of individual expression, but of the right of self-selected associations of private individuals to educate--even to "counter-educate"--as they see fit and as they are able. Their ability to do so, even within such a celebrated

tradition of pluralism as exists in this country, is limited on the one side by public authority and on the other side by property, by the collective wealth and social power of the private association, whatever its purpose might be. Unlike the elite academies, many private schools do not reflect a disproportionate concentration of wealth and social status. Many people even go so far as to argue that the elite schools themselves have changed in this regard over the past couple of decades with expanded recruitment and admissions policies based on merit. And unlike both public and parochial schools, which on this point have become more similar with the passage of time, many private schools have no hierarchy of authority and governance to link them together and give direction to policy and pedagogy. Such schools are competitive enterprises in a capricious market; they share a responsiveness to the tastes of parents who choose to send their children there instead of to a public school.

Yet it is precisely here that a unified interpretation becomes crucial. For it is unrealistic to speak of what is happening in the world of private education as if it were an amorphous market constituted by the free choices of individuals. Rather, as the preceding two sections have argued, there is a complex interweaving of alienation, conflicting notions of legitimate authority, and differing access of private associations to social and economic power. On the one hand, rights of private association have been an edge against which the state has defined its role in schooling. On the other, state authority has been the edge against which private schools have asserted their identity. It is by the relation of the two, not by their separate interests, that we can

interpret the reality of education as a whole. The next section begins to address this relation by looking at the third major question: Once public schooling had become the dominant pattern, why did it not eradicate nonpublic schooling altogether, and what does this failure tell us about the persisting roles of both public and nonpublic schooling in the United States?

The Limits of Public Authority

In 1922 the people of Oregon approved a referendum that would require parents and guardians to send every normal child between the ages of eight and sixteen to a public school in the district where the child lived. Public sentiment warmed to the issue and there was a high turnout for the election. The public school establishment favored the law, which was a virtual prohibition of private schools for the education of adolescents. An education journal of the era commented that the affirmative vote was "merely an expression of satisfaction with existing conditions." A similar law had been turned down recently by the electorate in Michigan; numerous other states were showing signs of being ready to bring the issue to a popular vote. The Michigan referendum had been defeated with the cooperation of the public school establishment, but only after the Catholic Church agreed to submit parochial schools to supervision and inspection by the state department of education. In Oregon the referendum had been introduced by members of the Ku Klux Klan who had infiltrated the Scottish Rite Masons and were capitalizing on a wave of nativist and anti-Catholic vituperation in the years following World War I. Behind the extremists was the fact that the use of public authority for expanded programs to assimilate and control alien masses of people

had become the lingua franca of a dominant culture that had been trying to organize itself and its newcomers for a century. By now the millennial message had lost its patina of altruism: "The State has a right to demand that every child spend sufficient time in an American institution of learning to inculcate it [sic] with the fundamentals of Americanism...." In Oregon the Grand Dragon of the Klan scotched all the euphemisms when he said that "somehow these mongrel hordes must be Americanized; failing that, deportation is the only remedy."[16]

Such use of state authority had been implicit, at least as a possibility, since the beginning of the common school crusade. The idea of an absolute prohibition had surfaced in polite discourse and policy debates in the past. It could be said too that the argument gained tacit authority with the growth of the public system over the years. Between 1840 and 1900 the public share of total expenditures for formal education at all levels climbed from 47 percent to 79 percent. In St. Louis, to cite the experience of one city, the percentage of schoolchildren in nonpublic schools dropped from 49 percent of the total in 1850 to only 20 percent in 1880, and it remained at about the same level until 1920. In Oregon, by the time of the infamous referendum in 1922, "almost 95 percent of all children between seven and thirteen were in school; over 93 percent of these students attended public schools."[17]

Paralleling these trends, by the end of the nineteenth century most states had enacted statutes or constitutional amendments prohibiting the use of state funds for any purpose in parochial schools. A similar federal restriction that would have applied to all states, called the "Blaine amendment," was passed in the House of Representatives but

defeated by the Senate in 1875. Schooling became compulsory by law in most states during the late Victorian era, though the reach of such laws always exceeded their grasp. Throughout those years and into the first two decades of the twentieth century the nation continued to absorb millions of impoverished immigrants each year, and its cities lacked adequate services or social structures to improve living conditions of those who were crowded in working class tenements and ghettos.

The question of national unity became more rather than less insistent for those who were intent on maintaining cultural homogeneity. The millenial consensus seemed more tenuous than ever in the years of urban unrest, labor strife, and socialist political victories surrounding World War I. The country soon began to close its doors to immigration. Fundamentalists and others agitated against the liberal pluralism and scientific outlook they saw creeping into government during the progressive era. As often happens with social conflict, formal schooling became the crucible in which opposing views of the world met and their differences were precipitated.

In 1925 the U.S. Supreme Court emphatically struck down the Oregon law. The decision, Pierce v. Society of Sisters, was perhaps the strongest affirmation of a liberal pluralist society since the Dartmouth decision in 1819, which protected the right of colleges to organize as private corporations. The plaintiffs in Pierce operated a parochial school; they sought protection against an "arbitrary, unreasonable, and unlawful interference with their patrons and the consequent destruction of their business and property." The court supported their claim for

protection against deprivation of property without due process of law, as guaranteed by the Fourteenth Amendment. It also added an important dictum about rights belonging to customers of the business and their freedom to contract educational services of their choice:

> the act of 1922 unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.... The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the state to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the state....[18]

While it was clearly a victory for rights of private association in American education, the decision also included the quid pro quo that had accompanied the defeated referendum in Michigan. The state would retain the power to regulate private schools, and this power was broadly defined: "to regulate all schools, to inspect, supervise and examine them, their teachers and pupils; to require that all children of proper age attend some school, that teachers shall be of good moral character and patriotic disposition, that certain studies plainly essential to good citizenship must be taught, and that nothing be taught which is manifestly inimical to the public welfare." As one Catholic writer put it, "If the Pierce decision is, as many have asserted, the Magna Carta of the nonpublic school in American law, it must be said that Pierce is not an entirely satisfactory Bill of Rights for the private school."[19]

Although it left intact the power of the state to require school attendance, the court balanced that power with parental rights to choose whether to send their children to a public or private school. After

the ruling many ambiguities remained, generating issues for conflict and resolution in the future. One issue would be the extent of public regulation--a nettlesome demand in the absence of public funding. Another would be the permissible range of indirect funding for private religious schools within the legal strictures defining the separation of church and state. A third would be whether federal funds could go to parochial schools, and if so, under what conditions and for what purposes. A fourth would be the rights of parents who decide not to put their children through any formal schooling at all. A fifth would be the question of family choice and funding schemes to allow parents to choose between public and private schools while using public funds. Another unresolved question would be religious instruction in public schools--a ceaseless probing to define the educational significance of the separation between church and state, extending secularization far beyond what had been envisioned by the Protestant consensus of the nineteenth century. All of these and more besides are important developments that need to be scrutinized carefully at a time when public officials are considering changes in the balance of "public" and "private" education.[20]

But to continue the concern of this essay with social agreements about the relationship between "public" and "private" schooling, let us pull a single thread from the rich tapestry of ambiguities suggested by Pierce. This will provide both a conclusion for the essay and a point of departure for future discussion of the issues that arise between public authority (whether it be just or prejudiced) and rights of private association (whether they protect religious and communal traditions or ensure the perpetuation of status and privilege among elites).

That thread is the relation of property to the political decisions affecting "choice" and "equity" in a democracy. As various scholars and court decisions have pointed out, the state's power over private schools is subject to the same limitations as it would be for rights of private property generally: "Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of government interference." While the state can regulate the private sector of education, it has limited power over who may associate or under what agreements. One is inclined to applaud such a constraint when thinking about bureaucratic social control or a jingoistic referendum sponsored by the Ku Klux Klan. But how does the constraint affect the power of a democratic polity to make choices aimed at equalization and social justice? If the state's power to influence social outcomes does not apply to some families who are in a position to choose the basis on which their children will associate with other children, then its influence may also be limited, or even greatly skewed from legitimate state purpose, for all familites and children.[21]

Such a prospect has been resisted in the public sector by the expansion of "rights" to include more than political rights in a technical sense. The new interpretation of social rights and entitlements to public assistance involves state action on behalf of disadvantaged groups in the social order. The conceptual breakthrough behind such expansion of public authority came when the U.S. Supreme Court decided in 1954, in Brown v. Board of Education, to overturn de jure racial segregation and the doctrine of "separate but equal" educational

facilities by interpreting more broadly the "equal protection of the laws" guaranteed by the Fourteenth Amendment. The social legislation of the following decades continued to expand public authority and expenditures to accomplish such ends. Setting this intent against Pierce's legitimation of private schools on the basis of property rights and customer choice, we confront again the historical tension between public and private in education. There is still a "public" authority interested to some extent in common schooling across lines of settlement and race and social class. There are also, on the other hand, social agreements still in effect that allow "private" association to operate at least partially beyond the reach of decisions made in the political realm. These agreements have helped to people the suburbs in highly stratified and largely segregated neighborhoods dictated by economic interests. The "private" forms of association in education have come to include all-white academies in areas that are under federal orders to desegregate the public schools.

Perhaps in this light it could be argued that Pierce stands in opposition to Brown, since the former upholds one of the chief means of subverting the latter. It seems likely that tuition tax credits would expand the spheres protected by Pierce while restricting the ambit of Brown to some extent. To the extent that this would be true if the proposal were passed, the message seems to be that the state has some power to influence the distribution of resources for social services in the public sector, but it has precious little authority to alter existing patterns of association--the social and economic structures that bring certain children together and not others.

Is there a way out of this dilemma? If the private option had been denied to Catholics and others demanding family choice, it would likewise have been denied then to elites, and this would have made the democratic polity the single point of access and leverage for resolving differences regarding educational opportunity. From the standpoint of family choice this might seem undemocratic, but it could also be argued that education would become truly democratic only when it emanated exclusively from the polity in which all citizens could participate and collectively control. Yet as the social context of the Pierce case demonstrates, one has reason to fear that sort of democracy even as one objects to the paradoxical democracy currently in practice, which by allowing private options has perpetuated the inequalities it is seeking to remedy.

The foregoing discussion has only scratched the surface of questions that arise when one examines the interaction of "public" and "private" in elementary and secondary education. The intent has been to suggest some initial boundaries in which useful questions can be posed and in which critical differences can be analyzed. Every advocate and opponent praises community, and all points of view argue for freedom of one kind or another. The difficulty is to reconcile any assertion with the society that has come into being since public education appeared. Even the support of private options is a public concern; it is a political question now. The result will be "democracy" as we are to know it. A task remains, however, in the continuous critique of the structures of experience and opportunity that have been created by such agreements.

NOTES

1. Ralf Dahrendorf, The New Liberty: Survival and Justice in a Changing World (Stanford, California: Stanford University Press, 1975), 27.

2. See Michael Walzer, Radical Principles: Reflections of an Unreconstructed Democrat (New York: Basic Books, 1980), 259: "the principle on which children are coercively associated should anticipate the pattern that would prevail among adults in a world of freedom and equality."

3. For an analysis of how the word "public" changed from the eighteenth to the nineteenth century, see Barnard Bailyn, "Education as a Discipline: Some Historical Notes," in The Discipline of Education, ed. John Walton and James L. Kuethe (Madison, Wisconsin: The University of Wisconsin Press, 1963), 133-138; and Lawrence A. Cremin, American Education: The National Experience, 1783-1876 (New York: Harper & Row, Publishers, 1980), 148-181.

4. Robert D. Cross, "The Origins of Catholic Parochial Schools in America," American Benedictine Review 16 (1965), 194-209; Vincent P. Lannie, "Church and State Triumphant: The Sources of American Catholic Educational Historiography," History of Education Quarterly 16 (1976), 131-145; Marvin Lazerson, "Understanding American Catholic Educational History," History of Education Quarterly 17 (1977), 297-317; and Timothy L. Smith, "Parochial Education and American Culture," in History and Education: The Educational Uses of the Past, ed. Paul Nash (New York: Random House, 1970), 192-211. Quote is from Lazerson, 298.

5. This arguement is developed at length by David Tyack and Elisabeth Hansot in Managers of Virtue (New York: Basic Books, 1982). For the notion that public education spread as an evangelical social movement manned by Protestants and backed by voluntary associations, I am indebted to earlier work by Tyack and Hansot. See John Higham, "Hanging Together: Divergent Unities in American History," Journal of American History 61 (1974), 13-14; Charles Foster, An Errand of Mercy: The Evangelical United Front, 1790-1837 (Chapel Hill: University of North Carolina Press, 1960); Clifford Griffin, Their Brother's Keepers: Moral Stewardship in the United States, 1800-1865 (New Brunswich, New Jersey: Rutgers University Press, 1960).

6. Jonathan Messerli, Horace Mann: A Biography (New York: Alfred A. Knopf, 1972), 442-443.

7. Horace Mann, Journal entry, June 14, 1837. Quoted in Raymond B. Culver, Horace Mann and Religion in the Massachusetts Public Schools (New Haven: Yale University Press, 1929), 35.

8. David B. Tyack, "The Kingdom of God and the Common School: Protestant Ministers and the Educational Awakening in the West," Harvard Educational Review 36 (1966), 447-469; and Timothy L. Smith, "Protestant Schooling and

American Nationality, 1800-1850," Journal of American History 53 (1967), 679-687. On the characteristics of the schoolmen, see David B. Tyack, "Pilgrim's Progress: Toward a Social History of the School Superintendency," History of Education Quarterly 16 (1976), 258.

9. Selwyn K. Troen, The Public and the Schools: Shaping the St. Louis School System, 1838-1920 (Columbia: University of Missouri Press, 1975), 42. For a lucid account of arguments behind the extension of public control in New York, see Lawrence A. Cremin, The American Common School: An Historic Conception (New York: Bureau of Publications, Teachers College, Columbia University, 1951), 151-175. The arguments as I have listed them are drawn from Troen's narrative account and follow closely the wording of his primary sources.

10. See Cross, Lannie, Lazerson. See especially James W. Sanders, The Education of an Urban Minority: Catholics in Chicago, 1833-1965 (New York: Oxford University Press, 1977). For a review of contemporary issues, see Andrew M. Greeley and Peter H. Rossi, The Education of Catholic Americans Chicago: Aldine Publishing Company, 1966); and Greeley et al., Catholic Schools in a Declining Church (Kansas City: Sheed & Ward, Inc., 1976).

11. Otto F. Kraushaar, American Nonpublic Education: Patterns of Diversity (Baltimore: The Johns Hopkins University Press, 1972), 13. Theodore R. Sizer, ed., The Age of the Academies (New York: Bureau of Publications, Teachers College, Columbia University, 1964); Sizer's introductory essay is a concise and thoughtful sketch of the academy movement. On academies as institutions for training community leaders, see Daniel Calhoun, The Intelligence of a People (Princeton: Princeton University Press, 1973), 46-47, 59-61.

12. James McLachlan, American Boarding Schools: A Historical Study (New York: Charles Scribner's Sons, 1970), 47.

13. McLachlan, 257. Also see Michael Katz, "The Emergence of Bureaucracy in Urban Education: The Boston Case, 1850-1884," History of Education Quarterly 8 (1968), 155-188, 319-357; and David B. Tyack, "Bureaucracy and the Common School: The Example of Portland, Oregon, 1851-1913," American Quarterly 19 (1967), 475-498. For a view that emphasizes common experience and a continuity of tradition instead of alienation and class conflict, see Lawrence A. Cremin, American Education: The National Experience. Cremin generally does not treat the distinction between public and private as an indicator of social power and class: "Whether public or private in the particulars of their support and control, nineteenth century institutions of education tended to present themselves and in turn to be perceived as community institutions; indeed, in the view of their leaders, the very fact that they were educative institutions made them community institutions" (p. 486).

14. E. Digby Baltzell, Philadelphia Gentlemen: The Making of a National Upper Class (Philadelphia: University of Pennsylvania Press, 1958), 60, 296, 305. Also C. Wright Mills, The Power Elite (New York: Oxford University Press, 1959); and Baltzell, The Protestant Establishment (New York: Random House, 1964).

15. Steven B. Levine, "The Rise of American Boarding Schools and the Development of a National Upper Class," Social Problems 28 (1980), 91-92.

16. "Balloting Parochial Schools Out of Existence," in "Educational News and Comment," The School Review 21 (1923), 2. See Donald A. Erickson, "On the Role of Nonpublic Schools," School Review 69 (1961), 338. On state right to demand public schooling, quote appears in "Abolishing Private Schools," in "Educational News and Editorial Comment," Elemen tary School Journal 25 (1924), 39. On KKK and "mongrel hordes" see David B. Tyack, "The Perils of Pluralism: The Background of the Pierce Case," American Historical Review 74 (1968), 74-98.

17. For review of nineteenth century controversies over the state role in education see R. Freeman Butts and Lawrence A. Cremin, A History of Education in American Culture (New York: Henry Holt and Company, 1953), 375-379. The statistics on total educational expenditures are taken from Albert Fishlow, "Levels of Nineteenth Century American Investment in Education," Journal of Economic History 26 (1966), 420. St. Louis figures from Troen, The Public and the Schools, 34. Oregon figures from Tyack, "Perils of Pluralism," 75-76.

18. Pierce v. Society of Sisters 268 U.S. 510 (1925).

19. Ibid. On state regulation see Donald A. Erickson, ed., Public Controls for Nonpublic Schools (Chicago: University of Chicago Press, 1969); Erickson, "On the Role of Nonpublic Schools"; and Kraushaar, 289-333. Final quote from Robert F. Drinan, Religion, the Courts, and the Public Schools (New York: McGraw-Hill Book Company, 1963), 125.

20. For overviews of church-state issues in education, see Drinan; Richard E. Morgan, The Politics of Religious Conflict: Church and State in America (New York: Pegasus, 1968); Paul A. Freund and Robert Ulich, Religion and the Public Schools (Cambridge, Massachusetts: Harvard University Press, 1965); Theodore Sizer, ed., Religion and Public Education (Boston: Houghton Mifflin Company, 1967). For cases and discussion of legal issues, see David L. Kirp and Mark G. Yudoff, Educational Policy and the Law: Cases and Materials (Berkeley: McCutchan Publishing Corporation, 1974).

21. John Elson, "State Regulation of Nonpublic Schools: The Legal Framework," in Erickson, Public Controls for Nonpublic Schools, 113. The quote is from Nebbia v. New York, 291 U.S. 523 at 525 (1933). On the issue of distribution versus association as the modus operandi of educational equity, see Michael Walzer, 257, arguing that the major problems are not those of distribution but of association. For background on political versus social rights, cf. materials on transition from Plessy to Brown in Kirp and Yoder, 281-306.